IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Satyendra Singh Vs. State of Rajasthan
(D.B. Criminal Appeal No.415/2003)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 17-2-2003 in Sessions Case No.106/2001 passed by Shri S.K.Mathur, RHJS, Additional Sessions Judge (Fast Track) No.1 Dholpur.

Date of Judgment: April 23, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Biri Singh Sinsinwar] for appellant.
Mr. Kamlendra Sihag]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

This appeal owes its origin in the judgment dated February 17, 2003 of the learned Additional Sessions Judge (Fast Track) No.1 Dholpur whereby the appellant Satyendra Singh was convicted and sentenced as under:-

U/s.364A IPC:
To suffer imprisonment for life and fine of Rs.250/-, in default to further suffer imprisonment for one month.

U/s.363 IPC:
No separate imprisonment.

2. It is the prosecution case that informant Hasnu Khan (Pw.6) submitted a written report (Ex.P-5) at Police Station Sepau on July 18, 2000 at 5.15 PM in regard to the incident occurred on May 27, 2000, wherein

Zakir, son of informant was kidnapped by Satyendra and Moola. On that report a case under sections 363 IPC was registered and investigation commenced. The investigating Officer arrested the accused and recovered Zakir. After completion of investigation charge sheet was filed against Satyendra and Moola for the offences under sections 363, 364, 368, 347 and 120B IPC. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Dholpur. Charges under sections 363, 364A, 346, 347, 368 and 120B were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 11 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence. Six witnesses in support of his defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced appellant Satyendra as indicated herein above. Co-accused Moola however stood acquitted of all the charges.

3. The only contention of learned counsel for the appellant is that charge under section 364A IPC is not established against the appellant as there is nothing on record to prove even prima facie that threatening was ever given to Zakir to cause his death in order to compel the Government or any other person to pay a ransom.

4. We find merit in this submission. Learned trial court in para 23 of the judgment observed that the prosecution failed to establish that Zakir was kidnapped for ransom.

> "... क्योंकि सत्येन्द्र द्वारा उसे पिरोती के लिए सदोष परिरूद्ध में रखा हो ऐसा साक्ष्य से जाहिर नहीं होता है ..."

5. Section 364A IPC reads as under:-

> "364A. Kidnapping for ransom, etc.- Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

6. Having scanned the material on record we notice that although informant Hasnu Khan (Pw.6) lodged the report after one month and twenty one days, the delay in instituting the report has properly been explained. We find that charge under section 363 IPC is established against the appellant beyond a reasonable doubt. Zakir was 10 years of age while he was kidnapped by the appellant from the custody of his lawful guardian. Zakir was not allowed to go back but he was kept confined.

7. For these reasons, we partly allow the appeal and instead of section 364A we convict the appellant under section 363 IPC. Looking to the fact that the appellant has already suffered confinement for a period of more than six years, the ends of justice would be met in sentencing him to the period already undergone by him in confinement. The appellant Satyendra Singh, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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